

Gender Sensitive Legislations in India- A Retrospect

Abstract

Globalization, has brought in mixed blessings to women in contemporary India, whereby, taking the learnings from across the world, women in Indian subcontinent have started insisting for their rights, be it in the matters of election or equality of status and opportunity in employment.

Over the years, Indian reformers such as Raja Ram Mohan Roy influenced by the modern concept of freedom, liberty, equality and justice started to question the prevailing discriminatory practices against women. The road map for women empowerment is there but still we have miles to go on this path of empowerment. Women are an integral part of our society. They play an important role in determining the destiny of a nation.

Keywords: Gender, Legislation, Harassment, Constitution, Law.

Introduction

Throughout the entire gamut of history encompassing the social renaissance, the need for gender justice has always been a debatable issue in the Indian society. It remained on board in every era for the reason as rightly pointed out by famous theoretician Friedrich Engels in his classical writing "Origin of the Family, Private Property and the State" that "*Woman was the first human being that tasted bondage. Woman was a slave before slavery existed*"¹.

Pandit Jawahar Lal Nehru, the first Prime Minister of Independent India aptly commented "*You can tell the condition of a nation by looking at the status of its women*". To Quote Zehra Nigah, the famous poet, speaking on the predicament of a woman of yester years -

एक के घर की खिदमत की,
और एक के दिल से मोहब्बत की,
दोनों फर्ज निभा कर,
उसने सारी उम्र इबादत की.....

However, the condition of women in India has not undergone any meteoric transformation and we stand on the edge as far as the safety, security and liberation of women is concerned. Though in the legal sphere, the position of women has changed, yet, socially the disparities continue to exist enormously due to the inequality woven in the cultural fabric of the predominantly patriarchal Indian society. Religiously, a woman is deified and is considered to be the epitome of power and the source of all creation yet etymologically, she has been subjected to deprivation, suppression and brutality.



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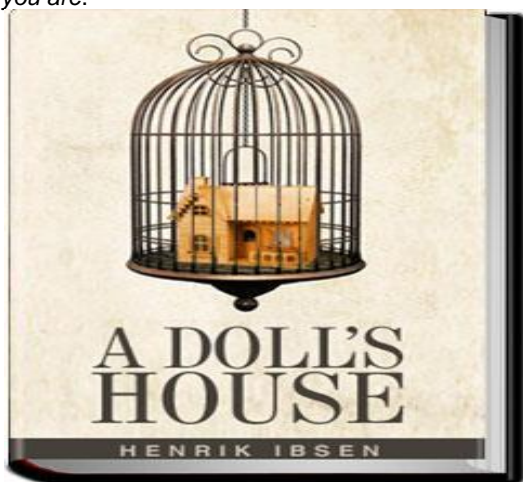


Globalization, in fact, has brought in mixed blessings to women in contemporary India, whereby, taking the learnings from across the world, women in Indian sub-continent have started insisting for their rights, be it in the matters of, election or equality of status and opportunity in employment. The Indian judiciary also feels convinced of the need for women's empowerment and removal of gender related inequalities.

The constitution of India has taken care to providing equal opportunities to women in all walks of life. A plentiful judicial remedies and constitutional rights are available to the fairer sex for the eradication of social evils and crimes against women in India.

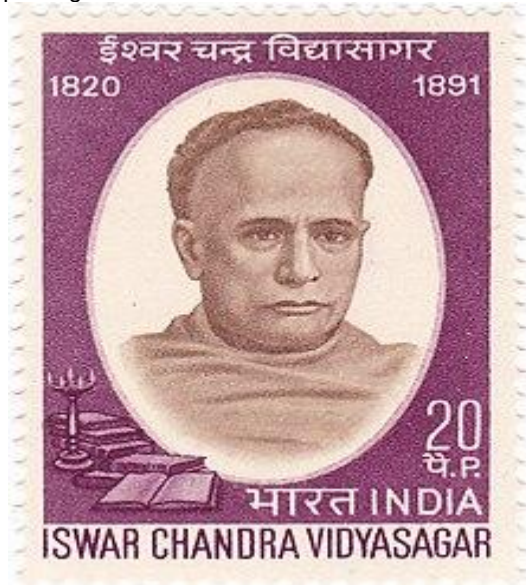


However, awareness for these rights and laws being on the weaker side has not been successful enough for resolution of the grievances and wrongs done to women in our Indian society. The principle of gender equality is enshrined in the Indian Constitution in its Preamble, Fundamental Rights, Fundamental Duties and Directive Principles. The Constitution not only grants equality to women, but also empowers the state to adopt measures of positive discrimination in favour of women. A dialogue from *A Doll's House* written by Henrik Ibsen explains the inner voice of a woman. Helmer tells Nora—"First and foremost, you are a wife and mother." Nora replied—"That I don't believe any more. I believe that first and foremost, I am an individual, just as much as you are."



This dialogue carries a forceful message, loud and clear. A woman today expects herself—and rightly so—to be treated as an individual, a living human being, entitled to the same dignity and status, as her male counterparts. Awareness of and sensitivity to the problem of gender bias are imperative in the judicial setting, since women look to the Courts of law for protection and justice in case of violence, abuse and discrimination.²

Over the years, Indian reformers such as Raja Ram Mohan Roy influenced by the modern concept of freedom, liberty, equality and justice started to question the prevailing discriminatory practices against women. The British were forced to abolish the ill-practice of Sati due to the tireless efforts of the Father of the Indian Reform Movement. Similarly, several other social reformers such as Raja Ram Mohan Roy, Ishwar Chandra Vidyasagar, Swami Vivekananda, Acharya Vinoba Bhave etc. worked for the upliftment of women in India. For instance, the Widow Remarriage Act of 1856 was the result of Ishwar Chandra Vidyasagar's movement for improving the conditions of widows.



The Child Marriage Restraint Act, 1929 was passed due to the efforts of our National leaders who encouraged young men to marry child widows and refrain from marrying a girl child. It was therefore planned by the constitution framers to include such provisions in the Constitution of free India which would help eliminate age-old exploitative customs and traditions and also such provisions which would help in empowering women socially, economically and politically. The Constitutional provisions in the Indian Constitution which relate to this issue are detailed as hereunder:-

Objectives of the Study

Objective of the paper are to sensitize the public at large towards the gender sensitivity and the gender sensitive legislations which are enacted for the protection of womenfolk who are homemakers as well as nation builders.

Preamble

The Preamble to the Constitution of India assures justice, social, economic and political; equality of status and opportunity and dignity to the individual. Thus it treats both men and women equal.

Fundamental Rights

The policy of women empowerment is well entrenched in the Fundamental Rights enshrined in our Constitution. For instance:

1. Article 14 ensures to women the right to equality.
2. Article 15(1) specifically prohibits discrimination on the basis of sex.
3. Article 15(3) empowers the State to take affirmative actions in favour of women.
4. Article 16 provides for equality of opportunity for all citizens in matters relating to employment or appointment to any office.

Directive Principles of State Policy

Article 39 (a) provides that the State to direct its policy towards securing for men and women equally the right to an adequate means of livelihood. Article 39 (d) mandates equal pay for equal work for both men and women.

Article 42 provides that the State to make provision for securing just and humane conditions of work and for maternity relief.

Fundamental Duties

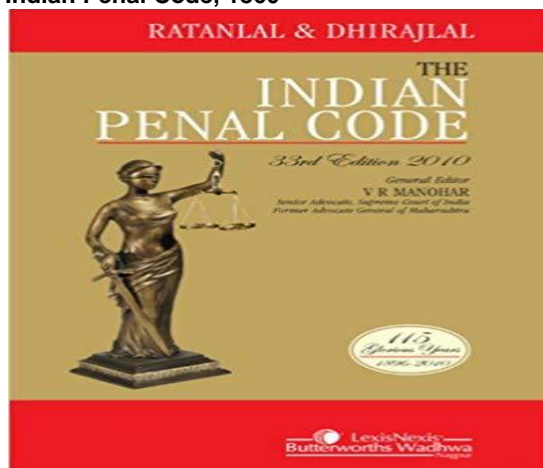
Fundamental duties are enshrined in Part IV-A of the Constitution and are positive duties for the people of India to follow. It also contains a duty related to women's rights:

Fundamental Duties and Directive Principles

Article 14 of the Constitution of India guarantees equality before law.

Article 15 prohibits discrimination on the grounds of sex. Article 16 states about equality of opportunity for all citizens in matters relating to employment. The 73rd and 74th amendments to the Constitution of India provided for reservation of seats (at least 1/3) in the local bodies of Panchayats and Municipalities for women.

Article 51 (A) (e) expects from the citizen of the country to promote harmony and the spirit of common brotherhood amongst all the people of India and to renounce practices derogatory to the dignity of women.

Indian Penal Code, 1860

Sections 292, 293 and 294 provide for punishment in sale and exhibit of obscene books objections and for obscene act in public place.

Section 304(b) deals about murder of women in connection with demand of dowry. Sections 312 to 318 deal about punishment for causing miscarriage. Section 354 provides punishment for outraging the modesty of any women, Section 366 deals with kidnapping for marriage against the will of the woman. Section 366-A deals about procurement of minor girls for sexual purpose. Section 376 deals with the heinous crime of rape and punishment for rape. Section 494 protects women from bigamy. Section 497 deals with protection of married women from adultery. The law however has recently undergone a major change. Section 498-A of Indian Penal Code deals about subjecting a woman to cruelty by her husband or relatives and her husband and Section 509 provides punishment for uttering words and gesture or act intended to outrage the modesty of a woman.

Code of Criminal Procedure, 1973

Under Section 125, Code of Criminal Procedure, a woman has got the right to maintenance.

Indian Evidence Act, 1872

Sections 113(a), 113(b) and 114(c) provide for presumptions as to abetment of suicide by a married woman within 7 years of marriage, as dowry death of a woman and as to absence of consent of woman for sexual intercourse.

**Hindu Adoption Maintenance Act, 1956**

Section 18-A provides for obligations of husband to maintain his wife. Section 18(2) provides right of wife to live separately and S. 19 provides for maintenance of widow by her father-in-law.⁶

Hindu Succession Act, 1956

Section 14 of the Act provides for property of female Hindu to be her absolute property. Section 23 provides right of female legal heirs in the dwelling house.

The Hindu Minority and Guardianship Act, 1956

Section 6 of the Act provides for mother as a natural guardian for minors below 5 years.

The Hindu Marriage Act, 1955

Section 13(2) of the Act provides for wife to present a petition for divorce. Section 13(b) provides equal right for wife for getting divorce by mutual consent.

Section 24 of the Act provides for relief for interim maintenance and expenses. Section 25 of the Act provides for right to a wife to seek permanent alimony and maintenance and Section 26 of the Act provides right to claim custody of children.

The Dowry Prohibition Act, 1961

Under the provisions of this Act demand of dowry either before marriage, during marriage and or after the marriage is an offence.

DOWRY-THE CANCER OF SOCIETY**The Muslim Women (Protection of Right on Divorce) Act, 1986**

Under the provisions of the Act provides for maintenance of women by the relatives after the iddat period.

The Factories Act, 1948

The provisions of this Act provides for health, safety, welfare, and working hours for women labourer working in factories.

Law governing sexual harassment at workplace?

In 2013, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act was passed broadening the Vishaka guidelines. Defining sexual harassment in clearer terms, the new law laid down the procedures for complaint and inquiry, and the action to be taken.

The Act mandates that every organisation with 10 or more employees set up an internal complaints committee of ICC at each office or branch. It defines various aspects of sexual harassment and protects all women working at, or even visiting, a workplace, in any capacity. The Act defines as "victim" any woman "of any age whether employed or not", who alleges to have been "subjected to any act of sexual harassment".

What constitutes sexual harassment at workplace?

The Vishaka guidelines define as sexual harassment any unwelcome sexually determined behaviour (whether directly or by implication). These are:

1. Physical contact and advances
2. A demand or request for sexual favours
3. Sexually coloured remarks
4. Showing pornography
5. Any other unwelcome physical, verbal or non-verbal conduct of sexual nature.



With the 2013 law broadening these guidelines, the Ministry of Women & Child Development has published a Handbook on Sexual Harassment of Women at Workplace Act. The handbook has detailed instances of unwelcome behaviour that constitutes sexual harassment at the workplace. These can be, broadly:

1. Sexually suggestive remarks or innuendos; serious or repeated offensive remarks; inappropriate questions or remarks about a person's sex life
2. Display of sexist or offensive pictures, posters, MMS, SMS, WhatsApp, or emails
3. Intimidation, threats, blackmail around sexual favours; also, threats, intimidation or retaliation against an employee who speaks up about these
4. Unwelcome social invitations with sexual overtones, commonly seen as flirting
5. Unwelcome sexual advances
6. According to the handbook, "unwelcome behaviour" is experienced when the victim feels bad or powerless; it causes anger/sadness or negative self-esteem. It adds unwelcome behaviour is one which is "illegal, demeaning, invading, one-sided and power based".
7. The Act specifies five circumstances that amount to sexual harassment. These are:
8. Implied or explicit promise of preferential treatment in her employment
9. Implied or explicit threat of detrimental treatment
10. Implied or explicit threat about her present or future employment status
11. Interference with her work or creating an offensive or hostile work environment
12. Humiliating treatment likely to affect her health or safety.

Who is an 'aggrieved woman' as per the Act?

According to the Handbook on Sexual Harassment of Women at Workplace, the Act recognises the right of every woman to a safe and secure workplace environment "irrespective of her age or employment/work status". Any woman coming to any workplace "whether in the capacity of regular, temporary, adhoc, or daily wages basis" is protected under the Act.

How to file a complaint of sexual harassment at workplace?

The 2013 Act says the aggrieved woman may make, in writing, a complaint of sexual harassment. However, a written complaint is not mandatory. If she cannot give a written complaint, the Act says, any member of the ICC "shall" render "all reasonable assistance" to her for facilitating it. Also, if the woman is unable to make a complaint citing "physical or mental incapacity or death or otherwise", her legal heir may do so.

Time-frame for making a complaint to ICC

According to the Act, the complaint of sexual harassment has to be made "within three months from the date of the incident". If such incidents have taken place over a time, the complaint should be made within three months from the date of the last incident. However, the ICC has the discretion to "extend the time limit" if "it is satisfied that the circumstances were

such which prevented the woman from filing a complaint within the said period". The ICC needs to record these reasons to exercise the right.

Case Studies

Vishaka Vs State of Rajasthan³

Bhanwari Devi, a social worker from Rajasthan, was brutally gang-raped by five men for preventing a child marriage. Determined to seek justice, she decided to go to court. In a shocking decision, the trial court acquitted all five accused. Vishaka, a Group for Women's Education and Research, took up the cause of Bhanwari Devi. It joined forces with four other women's organisations, and filed a petition before the Supreme Court of India on the issue of sexual harassment at the workplace.



On August 13, 1997, the Supreme Court commissioned the Vishaka guidelines that defined sexual harassment and put the onus on the employers to provide a safe working environment for women.

Mary Roy Vs State of Kerala⁴

Women from the Syrian Christian community in Kerala were prevented from inheriting property due to patriarchal traditions. This decree was challenged by Mary Roy, a woman's right activist and educator.

After the demise of her father, she filed a case against her elder brother when she was denied equal share in the family's inheritance. Though the plea was rejected by the lower court, the Kerala High Court overruled the previous judgment.

In 1986, the Supreme Court delivered a landmark judgment that granted Syrian Christian women the right to seek an equal share in their father's property.

LaxmiVs Union of India⁵

In 2006, Laxmi, an acid attack victim, filed a petition seeking measures to regulate the sale of acid and provide adequate compensation to the victim. Taking cognizance of the number of cases relating to acid attacks against women on the rise, the Supreme Court imposed stringent regulations on the sale of acid in 2013.

Thus road map for women empowerment is there but still we have miles to go on this path of empowerment. Women are an integral part of our society. They play an important role in determining the destiny of a nation. It has been rightly said by Swami Vivekanand, "The Best thermometer to the progress of nation is its treatment of women".⁹



Justice Leila Seth
(1930-2017)

The following poem by Justice Leila Seth, a crusader in the struggle for emancipation of women, reflects the contemporary state of women rights in our country and makes us ponder over the path of women empowerment which is difficult but not impossible!

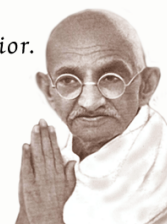
*The Girl Child Where have all the young girls gone?
Some were aborted before they were born:
A few were buried or choked with coarse paddy:
Others were smothered, starved or drowned in a well;
Poisoned with berries of oleander till dead,
So that dowry need not be paid or in-laws fed,
Or daughters raped, beaten or burnt –
This is the sad story of the girl child's hell.
Father, why do you discriminate against me
When I can be as good as my brother?
Mother, nurture, nourish and educate me and you will
see
That I will not be a burden but will control my own
destiny,
And you will have nothing to fear (if brother is not
there),
I will look after both of you in your old age;
I ask only to be treated equally –
will you not dare –
So that I have the freedom to choose
and the right to care;
And am no longer the prisoner of my gender
Unable to retaliate against injustice.
Oh Father, give me chance, Just give a chance,
Oh Mother, break the bonds of tradition
And let me into the sunlight to dance...
to dance... to dance.*

To conclude, Mahatma Gandhi had absolute faith in inherent power of women, he emphasized it by saying- "complete emancipation of women and her equality with man is the final goal of our social development, whose realization no power on earth can prevent".¹⁰

*To call woman the weaker sex is a
libel; it is man's injustice to woman.
If by strength is meant moral
power, then woman is
immeasurably man's superior.*

M. K. Gandhi

MAHATMA, Vol. 3, p. 33



Endnotes

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